



Summary of Decision

The following table is a high level summary of the decision of the Legal Services Board. It is not a formal part of the decision notice.

Purpose of notice
To set out the LSB's decision to grant the application in full from the BSB for approval of an amendment to its Bar Training Rules.
Alterations that are being approved by this decision
The amendment to the Bar Training Rules has been made to clarify the wording of rule rQ28 2. The change makes it clearer that before starting the vocational stage of training a person must have successfully completed the Bar Course Aptitude Test, <i>the pass score for</i> which is set by the Bar Standards Board from time to time.

Decision notice

The Bar Standards Board's application for approval of changes to regulatory arrangements to its Bar Training Rules

The Legal Services Board (“**LSB**”) has granted an application from the Bar Standards Board (BSB) for approval of an amendment to its Bar Training Rules.

This decision notice sets out the basis for the LSB granting the application and the decision taken, including a brief description of the changes.

The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The Bar Council is an approved regulator and the BSB is the regulatory arm to which The Bar Council has delegated its regulatory functions. The notes at page 5 of this notice explain the statutory basis for the decision.

This decision notice sets out the decision taken, including a brief description of the changes. The chronology for the LSB's handling of this application is also set out at the end of this decision notice.

Proposed changes

1. The proposed change is being made to rQ28.2 of the BSB's Bar Training Rules. The BSB wishes to clarify the wording of the rule so that it clearly states that before starting the vocational stage of the training, a person must have, amongst other things, completed the Bar Course Aptitude Test (BCAT) and that the pass score for the BCAT is set by the BSB from time to time.

Key issues considered in the assessment of the application

2. On 11 August 2016 we received the BSB's original application to amend rule rQ28.2; in that application the BSB sought approval to change the pass mark of the BCAT. When reviewing that application it became apparent that the current wording of the rule no longer contained reference to a specific pass mark for the BCAT as it did when it was originally approved in 2012. Therefore, as explained below in greater detail at paragraphs 4 to 10, the pass mark does not fall within the definition of regulatory arrangements within section 21 of the Act and therefore does not need LSB approval.
3. However, we discussed with the BSB that the current wording of the rule was unclear and it provided a revised application which explained at paragraph 35 that it wished to amend rQ28.2 of the BSB's Bar Training Rules to clarify the existing rule. The new wording is intended to clarify that successful completion of the BCAT is a requirement for all individuals before they embark on the vocational stage of training

and that it is the responsibility of the BSB to set the pass score for the BCAT from time to time.

The cut score

4. When the BCAT was first introduced, the “cut score” was explicitly stated in the regulatory arrangements; in July 2012 the BSB’s Bar Training Rules stated that before starting the vocational stage of training a person must, amongst other requirements, “have achieved a score of -1.34 or such score as substituted by the BSB from time to time in the [BCAT]”. The LSB indicated at that time that it would need to approve any change to the cut score. This was important for the LSB because of the concerns (expressed in that decision notice) about whether the introduction of the BCAT was a proportionate and targeted way to improve the entry and exit standards from the BPTC.
5. In the BSB Handbook (introduced in January 2014) the rule was framed differently and there is no specific reference to the score: rQ28.2 states that starting the vocational stage, a person must “have successfully completed the Bar Course Aptitude Test which is set by the Bar Standards Board from time to time”.
6. Given that the “cut score” is no longer explicit in the Handbook, it does not fall within the definition of regulatory arrangements within section 21 of the Act and therefore does not need LSB approval.
7. Whilst the “cut score” is no longer specified in the regulatory arrangements, we are grateful for the open and transparent way that the BSB has managed the proposed change to the score. It has helped us to understand the BSB’s evidence base that it has collected to support both its plan to change the cut score and the continued use of the BCAT in the selection process for the Bar Professional Training Course (BPTC).
8. In July 2012 we considered that proper statistical analysis on a larger scale than the pilots ran by the BSB prior to its application and over a longer timescale would need to be undertaken before the need for such a test could be verified. The BSB committed to undertake a comprehensive evaluation of the BCAT’s efficacy and impact over the first five years of the use of the test.
9. We note that the BSB is part way through this five year review period on the use of BCAT and this proposal to increase the cut score has arisen from some of the early analysis of the results. Whilst such a change to the “cut score” would appear to be supported by the evidence at this time, we would be concerned if having changed the pass mark, that too did not deliver the intended outcome of improving entry and exit standards to the BPTC, and there followed further changes. Multiple changes to the pass mark might be interpreted as the BSB not having the evidence to support its approach to rule-making.
10. We expect that the open dialogue we have had so far with the BSB will be maintained throughout the ongoing evaluation period for the BCAT and that it will

publicly report on its evaluation of the efficacy and impact of the BCAT at the end of the five year period.

Decision

11. The LSB has considered the BSB's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application; accordingly, the application is granted.
12. Annex A to this decision notice contains the amendments to the regulatory arrangements approved by the LSB.

Chronology

- The LSB confirmed receipt of an application from the BSB on 11 August 2016 and a amended application on 31 August 2016.
- The 28 day initial decision period for considering the application ends on 7 September 2016
- This decision notice is effective from 1 September 2016.
- The decision notice will be published on our website on 2 September 2016.

Neil Buckley, Chief Executive

Acting under delegated authority granted by the Board of the Legal Services Board

Date

Notes:

1. The LSB is required by Part 3 of Schedule 4 to the Act to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements.
2. Paragraph 25(3) of Schedule 4 to the Act explains that the LSB may refuse an application setting out a proposed change to the regulatory arrangements only if it is satisfied that
 - (a) granting the application would be prejudicial to the regulatory objectives
 - (b) granting the application would be contrary to any provision made by or by virtue of this Act or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator
 - (c) granting the application would be contrary to the public interest
 - (d) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator
 - (e) the alteration would enable the approved regulator to license persons under Part 5 [of the Act] to carry on activities which are reserved legal activities in relation to which it is not a licensing authority, or
 - (f) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration.
3. The designation requirements referred to in paragraph 2(b) above are set out in paragraph 25(4) of Schedule 4 to the Act and are
 - (a) a requirement that the approved regulator has appropriate internal governance arrangements in place
 - (b) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated, and
 - (c) the requirements set out in paragraphs 13(2)(c) to (e) of Schedule 4, namely that the regulatory arrangements are appropriate, comply with the requirements in respect of resolution of regulatory conflict (imposed by sections 52 and 54 of the Act) and comply with the requirements in relation to the handling of complaints (imposed by sections 112 and 145 of the Act).
4. In accordance with paragraphs 20(1) and 23(3) of Schedule 4 to the Act, the LSB has made rules¹ about the manner and form in which applications to alter regulatory arrangements must be made. Amongst other things, the rules highlight the applicant's obligations under section 28 of the Act to have regard to the Better Regulation Principles. They also require applicants to provide information about each proposed change and details of the consultation undertaken.
5. If the LSB is not satisfied that one or more of the criteria for refusal are met, then it must approve the application in whole, or the parts of it that can be approved.

¹ Rules for Rule Change Applications – Version 2 (November 2010)

Annex A

The following is an extract from the Bar Standards Board's Handbook, specifically from the Bar Training Rules in Part 4 (Qualification Rules) of the Handbook.

B4. The Vocational Stage

- rQ27 A person starts the *vocational stage* of training on starting to attend at a *Bar Professional Training Course*, and completes the *vocational stage* on being certified by the course provider that he has successfully completed a *Bar Professional Training Course*.
- rQ28 Before starting the *vocational stage*, a person must:
- .1 have completed (or been exempted under Section 4.B7 from) the *Academic Stage*; and
 - .2 have successfully completed the *Bar Course Aptitude Test*, the pass score for which is set by the *Bar Standards Board* from time to time; and
 - .3 be a member of an *Inn of Court*.
- rQ29 A person may not start the *vocational stage* more than five years after completing the *Academic Stage* except with the permission of the *Bar Standards Board* and after complying with any condition which the *Bar Standards Board* may impose.